

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4813 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

ASKA CO OP HOUSING SOC LTD

Versus

STATE OF GUJARAT & ORS

Appearance:

Shri D.J. Bhatt, Advocate, for the Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for
Respondents Nos. 1 & 2

Respondent No. 3 served

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 24/07/96

ORAL JUDGEMENT

The order passed by the District Development Officer at Gandhinagar (respondent No. 2 herein) on 21st March 1988 as affirmed in revision by the order passed by and on behalf of the State Government (respondent No. 1 herein) on 31st January 1989 (communicated on 27th

February 1989) is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 2 cancelled what is popularly known as the N.A. permission granted to the petitioner with respect to certain parcels of land involved in this petition by the order passed on 21st November 1981.

2. The facts giving rise to this petition move in a narrow compass. The petitioner is a co-operative housing society registered under the Gujarat Co-operative Housing Societies Act, 1961. It applied for the N.A. permission with respect to certain parcels of land in its occupation and possession. By the order passed by the Deputy District Development Officer on 21st November 1981, such N.A. permission came to be granted on certain terms and conditions. Its copy is at Annexure D to this petition. It appears that pursuant thereto the petitioner had started construction of houses for its members. It transpires from the material on record that, by one communication received from the Gram Panchayat at Koba, the petitioner was informed that the Taluka Development Officer had directed not to raise construction pursuant to the N.A. permission. The petitioner was thereupon required to stop its construction activity. It may be noted that under the terms and conditions of the N.A. permission, the petitioner was required to complete the construction work within 3 years from the date of the order in question. The petitioner therefore applied for extension of the time-limit by its application of 19th October 1984 made to respondent No. 2 herein. Its copy is at Annexure E to this petition. That has remained pending without any decision so far. In the meantime, respondent No. 2 issued one show-cause notice on 19th November 1987 calling upon the petitioner to show cause why the N.A. permission should not be cancelled on account of breach of conditions attached thereto. Its copy is at Annexure F to this petition. The petitioner filed its reply thereto on 15th December 1987. Its copy is at Annexure G to this petition. Thereafter, by his order passed on 21st March 1988, respondent No. 2 cancelled the N.A. permission. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in revision before respondent No. 1. By the order passed by and on behalf of respondent No. 1 on 31st January 1989 (communicated on 27th February 1989), the revisional application came to be rejected. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in

revision by the order at Annexure B to this petition.

3. As rightly submitted by learned Advocate Shri Bhatt for the petitioner, the petitioner's case did not warrant any drastic action of cancellation of the N.A. permission for non-completion of the construction work within the stipulated time-limit of 3 years which the petitioners could not do on account of the stay order passed by the Taluka Development Officer as indicated by respondent No. 3 herein. Besides, runs the submission of Shri Bhatt for the petitioner, respondent No. 2 ought not to have cancelled the N.A. permission by the impugned order at Annexure A to this petition without disposing of the application at Annexure E to this petition. As against this, learned Assistant Government Shri Sompura for respondents Nos. 1 and 2 has submitted that the petitioner was required to complete the construction work within the stipulated time-limit of 3 years and non-completion would visit the petitioner with the consequences reflected in the impugned orders at Annexures A and B to this petition. It has also been urged by learned Assistant Government Pleader Shri Sompura for respondents Nos. 1 and 2 that the pendency of the application at Annexure E to this petition should not come in the way of the authorities in taking action for breach of the conditions attached to the N.A. permission order.

4. It may be mentioned that the condition regarding completion of construction within the stipulated time-limit has to be regarded as directory and not mandatory. It is possible that the construction work may not be completed within the stipulated time-limit for a variety of reasons. For example, the area in respect of which such N.A. permission is granted might face acute shortage of water on account of successive droughts for 2-3 years. The construction activity may not be undertaken on account of non-availability of building materials for a certain period of time. Construction activity may come to a standstill if the area is affected by unexpected events like floods, riots, earthquakes and/or the like. If such construction activity is not completed within the stipulated time-limit on account of the circumstances beyond the control of the person concerned, the time-limit for completion of such construction can be extended on his making the necessary application for the purpose. If the time-limit is extensible on such ground, the condition regarding completion of such construction within the stipulated time-limit can be said to be directory and not mandatory.

5. In the instant case, I think respondent No. 2 was not justified in cancelling the N.A. permission for not completing the construction work within the stipulated time-limit of 3 years. It clearly transpires from the material on record and also from the application for extension of time-limit at Annexure E to this petition that the petitioner had already commenced construction work and it was required to stop construction work by means of one communication sent by respondent No. 3 in the name of the concerned Taluka Development Officer. It was stated to the petitioner that the concerned Taluka Development Officer had asked respondent No. 3 to convey to the petitioner that no construction in terms of the N.A. permission should be undertaken by the petitioner. I think the petitioner could not have carried on construction in view of such communication received from respondent No. 3 in the name of the concerned Taluka Development Officer. It is true that the petitioner ought to have moved the concerned authority why such stay against construction was granted or the highest authority by way of appeal for lifting the stay against construction. Instead, the petitioner chose to apply for extension of the time-limit. It transpires from the application at Annexure E to this petition that this was made to respondent No. 2 herein. He was certainly an officer higher in rank to the concerned Taluka Development Officer. He could have himself ascertained why the Taluka Development Officer chose to give direction to the petitioner through respondent No. 3 to stop construction activity in terms of the N.A. permission obtained by it. If permissible, he could have examined its propriety as well. If not, he could have granted extension of time-limit with a direction to the petitioner to get the aforesaid direction of the Taluka Development Officer examined by the Competent Authority in appeal or in revision. Instead of adopting such course of action, respondent No. 2 adopted a highly hypertechnical approach of cancelling the N.A. permission for breach of the aforesaid condition regarding completion of the construction within the stipulated time-limit which the petitioner could not do on account of the direction issued by the concerned Taluka Development Officer. Such hypertechnical approach on the part of respondent No. 2 cannot be sustained in law.

6. I think it was not proper on the part of respondent No. 2 to straightway issue the show-cause notice at Annexure F to this petition without disposing of the petitioner's application at Annexure E to this petition. If the ground given by the petitioner in the

application at Annexure E to this petition was not correct, respondent No. 2 could have rejected that application. However, without deciding its fate, it was not just and proper to issue the show-cause notice at Annexure E to this petition and to proceed with the matter culminating into the order at Annexure A to this petition.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition as affirmed in appeal by the order at Annexure B to this petition cannot be sustained in law. It has to be quashed and set aside. Ordinarily, I would have remanded the matter to respondent No. 2 for deciding the fate of the application at Annexure E to this petition for restoration of the proceeding culminating into the impugned order at Annexure A to this petition. Such a course of remand would however consume unnecessary time in the context of the fact that the cost of construction is rising by leaps and bounds with passage of every day. Instead, the petitioner deserves to be directed to complete the construction work within 2 years from today in terms of the N.A. permission.

8. In the result, this petition is accepted. The order passed by the District Development Officer at Gandhinagar on 21st March 1988 at Annexure A to this petition as affirmed in revision by the order passed by and on behalf of the State Government on 31st January 1989 (communicated on 27th February 1989) at Annexure B to this petition is quashed and set aside. The petitioner is directed to complete the construction work in terms of the N.A. permission within 2 years from today. No extension of this time will ordinarily be granted. Rule is accordingly made absolute with no order as to costs.
